

In re Appln. Of: Wayne G. Dahulich
Application No.: 10/726,065

AMENDMENTS TO THE DRAWINGS

Included herein are three replacement sheets including Figures 2, 5, 8 and 9 and three annotated sheets including Figures 2, 5, 8 and 9 showing the changes made thereto. These replacement sheets include the addition of reference number 98 for the fastener illustrated in Figs. 2 and 5, and the addition of reference numbers 92, 94 and 96 for the double-D portion, the base portion and the central portion, respectfully, illustrated in Figs. 8 and 9.

Attachment: 3 Replacement Sheets
 3 Annotated Sheets Showing Changes

REMARKS

Claims 21-49 were pending in this application. Claims 27, 30 and 46 have been canceled without prejudice to the applicants rights therein. Claims 21-26, 28, 29 and 31-41 have been amended. Claims 21-26, 28, 29, 31-45 and 47-49 remain pending, stand finally rejected and are at issue herein. Three replacement drawing sheets and three annotated drawings sheets including Figures 2, 5, 8 and 9 are included herewith. The specification, paragraphs [0023], [0027] and [0033], has been amended to describe elements clearly illustrated in the drawings. No new matter has been added by these amendments. Reconsideration of claims 21-26, 28, 29, 31-45 and 47-49 and indication of allowability thereof in view of the foregoing amendments, the Declaration of Mr. Joseph G. Wiegand and the following remarks are respectfully solicited.

The Examiner has rejected claims 21-49 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The applicant has thoroughly reviewed this ground of rejection in view of the claim terminology currently used, the specification and the drawings, but must respectfully traverse this ground of rejection with regard to claims 21-26, 28, 29, 31-45 and 47-49, the rejection being moot with regard to canceled claims 27, 30 and 46. Reconsideration of this ground of rejection and indication of the allowability of claims 21-26, 28, 29, 31-45 and 47-49 in view of the foregoing amendments, the Declaration of Mr. Joseph G. Wiegand and the following remarks are respectfully solicited.

As discussed in detail in MPEP § 2163, "If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met." See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient"). In the instant application, a skilled artisan would have understood the inventor to be in possession of the claimed invention of claims 21-26, 28, 29, 31-45 and 47-49 at the time of filing as discussed more fully below and as evidenced by the Declaration of Mr. Joseph G. Wiegand, Research and Development Manager for the assignee of the instant application.

The applicant first wishes to thank the Examiner for the thorough consideration of claims 21-49 and the recognition of patentability of these claims over the prior art of record.

Specifically, since MPEP § 2163.06(I) directs that "[t]he examiner should still consider the subject matter added to the claim in making rejections based on prior art since the new matter rejection may be overcome by applicant," the applicant is entitled to take the lack of a prior art rejection as an acknowledgement that no such rejection is proper. As such, and in view of the following discussion that the applicant respectfully submits will overcome the new matter rejection by specifically pointing out why a skilled artisan would understand that the inventor was in possession of the claimed invention at the time of filing, the applicant respectfully requests an indication of the allowability of claims 21-26, 28, 29, 31-45 and 47-49 at an early date.

Turning now to the specific rejections, the Examiner indicated that the adjective "tensioned" used in the preamble of claims 21-40 is new matter. The Examiner has suggested, however, that the addition of the "stakes" would limit the claims to a "tensioned tent." The applicant wishes to thank the Examiner for this suggestion, and has amended claim 1 to recite the stakes that, in combination with the guy wires, tension the tent. While the term "tensioned tent" does not appear *ipsis verbis* in the specification, the drawings, specifically Figs. 1 and 2 clearly illustrate such a "tension tent" with guy wires and stakes as suggested by the Examiner. Indeed, to more fully comport with the common designation for such a tent, claims 21-26, 28, 29 and 31-41 have been amended to recite a "tension tent" instead of "tensioned tent."

To support the position that a skilled artisan would recognize that the inventor was in possession of the invention of claim 21, to wit a "tension tent," the applicant has included herewith a Declaration of Mr. Joseph G. Wiegand, Research and Development Manager for the assignee of the instant application. In this Declaration, Mr. Wiegand explains why a skilled artisan would understand that the inventor was in possession of the claimed invention at the time of filing.

In view of the applicant's acceptance of the Examiner's suggested amendment to claim 21 and the Declaration of Mr. Wiegand, the applicant respectfully submits that this ground of rejection has been overcome. Reconsideration of this ground of rejection and indication of the allowability of claims 21-26, 28, 29, 31-40 at an early date are respectfully solicited.

The Examiner has also rejected the use of the terminology "double-D profile portion" in claim 23 because this phrase is not included in the specification. However, the fitting illustrated in Fig. 8 clearly utilizes a double-D profile as may be seen from the dashed lines (identified by reference numeral 37). While a double-D profile is generally rectangular in

shape as described in paragraph [0027], as illustrated in Fig. 8 two of the sides are curved such that it appears to be made of two capital letter D's placed back to back (hence the term "double-D"). This is a common configuration as supported by the Declaration of Mr. Wiegand. The use of the specific term "double-D" in the specification is not required in view of the immediately recognizable profile illustrated in Fig. 8. Further, paragraph [0035] specifically states "the members, fittings, and standoffs may have any of a variety of shapes, sizes, and/or configurations." This being said, the applicant has amended the specification, paragraph [0027], to recite that the profile illustrated in Fig. 8 is a double-D profile. Reconsideration of this ground of rejection is therefore respectfully solicited.

The Examiner has also rejected claims 25, 27, 41, 44 and 46 for including the limitation "pivotally attached." The applicant respectfully submits that this ground of rejection is moot with regard to claim 27 and 46 in view of their cancellation, and respectfully solicits reconsideration of this ground of rejection of claims 25, 41 and 44.

While the Examiner acknowledges that the specification describes and the drawings illustrate that the support member and the gusset are attached by a single bolt 51, the Examiner states that this is not sufficient to support the "pivotally attached" limitation. With this the applicant respectfully disagrees. By definition, the support of a member by a single bolt such as is illustrated and described will allow that member to pivot about that bolt, unless other structure prevents such pivoting. Indeed, the specification describes such a relationship between a single point and a member in paragraph [0032]. Because of the well known action of a member when supported only at a single point, the pivotal attachment is not described in paragraph [0032]. Instead, the final sentence describes that the "pivotal movement" may be limited by some of the other fasteners, implicitly recognizing that a skilled artisan would understand that such pivoting is inherent in the connection at a single point.

While this paragraph [0032] describes other elements, the same well know principle applies to the single bolt 51 attachment. That is, a skilled artisan would understand that the inventor was in possession of the claimed invention at the time of filing because it is well known that such an attachment by a single bolt as described in paragraph [0033] and as illustrated in Figs. 3, 5 and 6 inherently results in a "pivotal" attachment. This is supported by the Declaration of Mr. Wiegand. Reconsideration of this ground of rejection and indication of the allowability of claims 25, 41 and 44 at an early date are respectfully solicited.

The Examiner has rejected claims 28-29 for including the phrase "a pair of ties." While the Examiner acknowledges that the drawings illustrate "an stick element" hanging from the inner side of the shell, the Examiner indicates that this is only described in the specification as a "fastener." While the applicant respectfully submits that a skilled artisan would recognize that what is depicted hanging from the inner side of the shell and identified as a fastener is a pair of ties and not a "stick," the applicant has taken the Examiner's suggestion and has amended claim 29 to use the term "fastener" instead of "pair of ties." Claim 28 does not utilize the "pair of ties" language. Reconsideration of this ground of rejection in view of the adoption of the Examiner's suggestion and indication of the allowance of claims 28-29 at an early date are respectfully solicited.

The Examiner has rejected claims 30 and 31. Claim 30 has been canceled without prejudice, and therefore the rejection thereof is moot. With regard to claim 31, the applicant respectfully submits that this claim is no longer dependent on claim 30. With regard to the Examiner's position that the arch support structures are not described as being free standing, the applicant directs the Examiner's attention to the foot or bottom section 44 of the arch support structure illustrated in Figs. 3 and 4. The bottom of this section 44 is clearly illustrated as including a foot pad having a larger area that allows the arch support structure to be free standing. This being said, the applicant has amended this claim to remove the objectionable language. Reconsideration of this ground of rejection and indication of the allowability of claim 31 at an early date are respectfully solicited.

The Examiner has rejected claim 36 because the recitation of positioning at least one of the plurality of connectors to limit pivotal movement of the support member is not described in the specification. As discussed above, paragraph [0032] does describe the limitation of pivotal movement by the positioning of the fasteners 62. The immediately following paragraph [0033] describes the relationship between the plates and the support member which are the subject of claim 36. Both of these relationships are illustrated in the same Fig. 5. As is clear from the description of paragraphs [0032]-[0033] and the illustration of Fig. 5, the other fasteners will limit the pivotal movement of the support member. This is also supported by the Declaration of Mr. Wiegand. As such, the applicant respectfully submits that a skilled artisan would understand that the inventor was in possession of the claimed invention at the time of filing. This being said, the applicant has amended paragraph [0033] to specifically describe what is clearly illustrated in Fig. 5. Reconsideration of this ground of rejection is therefore respectfully solicited.

The Examiner has also rejected claims 27, 30 and 31 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The applicant respectfully submits that this ground of rejection is moot with regard to claim 27 and 30 in view of their cancellation, and that this ground of rejection has been overcome by the amendment of claim 31 indicated above. Reconsideration of this ground of rejection in view of the foregoing amendments and indication of the allowability of claim 31 at an early date are respectfully solicited.

The Examiner has objected to the drawings under 37 CFR 1.83(a) for failing to show every claimed feature of the invention specified in the claims. Reconsideration of this ground of objection in view of the following comments are respectfully solicited.

The double-D profile of element 37 (claim 23) is illustrated in Fig. 8 by dashed lines, and has been given reference numeral 92. The pivotal attachment of claims 25, 41, 44 and 46 is illustrated in Figs. 5 and 6 by the single point attachment of bolt 51 to member 52. The base portion and the central portion of claims 23 and 24 are identified by reference numerals 94 and 96, respectively, in Figs. 8 and 9. Claim 27 has been canceled without prejudice. The means for preventing disengagement of the fittings from the support members of claims 28 and 29 is illustrated in Figs. 2 and 5, and is now identified by reference numeral 98. Claim 30 has been canceled with out prejudice.

The Examiner has also objected to the specification for failing to provide proper antecedent basis for the claimed subject matter. Reconsideration of this ground of objection in view of the forgoing amendments to the specification to describe what is clearly illustrated in the drawings is respectfully solicited.

Specifically, paragraph [0023] has been amended to recite a tension tent as recited in claims 21+ and as illustrated in Fig. 1. Paragraph [0027] has been amended to recite a double-D profile portion 92 of element 37 illustrated in Fig. 8 by dashed lines. Paragraph [0027] has also been amended to recite the base portion 94 and the central portion 96 of claims 23 and 24 illustrated in Figs. 8 and 9. Paragraph [0033] has been amended to recite the pivotal attachment illustrated in Figs. 5 and 6. The limitation "pair of ties" has been removed from the claims in favor of the broader recitation of "fastener" already described in paragraph [0033], which has been amended to add reference numeral 98 for this element.

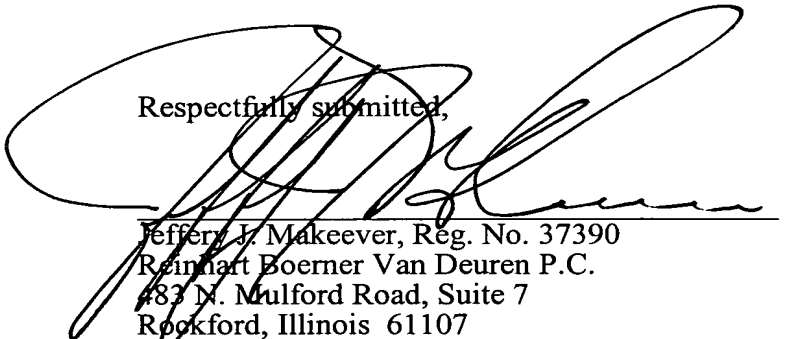
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In view of the above, the applicant respectfully solicits entry of the foregoing amendments as they place the claims in condition for allowance and/or reduce the issues for appeal, and they do not raise any new issues. Reconsideration of the instant application and indication of the allowability thereof at an early date are respectfully solicited.

In view of the above, the applicant respectfully submits that claims 21-26, 28, 29 and 31-49 are in condition for allowance. Reconsideration of claims 21-26, 28, 29 and 31-49 and indication of their allowability at an early date are respectfully solicited.

If the Examiner believes that a telephonic conversation will aid in the resolution of any issues not resolved herein, the Examiner is invited to contact the applicant's attorney at the telephone number listed below.

Respectfully submitted,



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